

## Guidance on Major Changes

### THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA) of 2004

#### PROVISION OF SERVICES TO PARENTALLY-PLACED PRIVATE SCHOOL STUDENTS WITH DISABILITIES

The Reauthorization of the Individuals with Disabilities Education Act (IDEA) in December of 2004 incorporated several changes in regard to local district responsibilities/requirements for the provision of services to parentally-placed private school children with disabilities. This document outlines the various areas covered and provides guidance on the requirements that must be met.

The obligation for meeting the state and federal requirements for provision of services to parentally-placed private school students belongs to the local public school district. These requirements do not apply to Public Charter Schools, State Board Operated Programs (MSB, MSD, SSSH) or Other State Agencies (DMH, DOC, DYS) that provide services to children and youth with disabilities.

The private school provisions apply to parentally-placed private school children with disabilities, ages 3 to 21, with the exception of homeschooled children under the age of 7 (mandatory school attendance age.)

Note: The term “parentally-placed private school student” refers to children placed by their parents in private, parochial or other religiously-affiliated schools or home schools.

**Major changes for the provision of services to parentally-placed private school children with disabilities as a result of the 2004 Reauthorization of the Individuals with Disabilities Education Act (IDEA) include:**

1. **Shift in responsibility**—responsibility for child find, child count and provision of services to parentally-placed private school students with disabilities has shifted from the LEA in which the student lives to the LEA in which the student's private school is located (for example, for a child whose district of residence is the Fort Zumwalt district, but who is attending a private school in the St. Charles district, the St. Charles district will now be responsible for providing any services to that child under the proportionate share provision and a service plan). This new requirement will impact the reporting of identified children on the agency's child count, the calculation and expenditure of the agency's proportionate share of federal funds, and the provision of services to parentally—placed private school students with disabilities.
2. **Funding**—parentally-placed private school students do not have an individual right to FAPE and will generally not receive the same type or amount of services that they would receive if they were enrolled in a public school. Local districts where private schools are located must expend a proportionate share of their federal funds in the provision of services to parentally-placed private school students. Information regarding calculation of proportionate share and other funding issues surrounding parentally-placed private school children is posted on the division's webpage at <http://www.dese.state.mo.us/divspeced/IDEA-PPPSCD.html>. This information will also be e-mailed to all special education contacts by August 1, 2005.
3. **Data Reporting**—there are new requirements for districts in the reporting of data to the department on parentally-placed private school children. Districts must now report to the DESE (1) the number of private school children evaluated, (2) the number determined to be eligible, and (3) the number served. More specific information regarding the data this is now required and how it will need to be reported can be found on the Division webpage at <http://www.dese.state.mo.us/divspeced/IDEA-PPPSCD.html>. This information will also be e-mailed to all special education contacts by August 1, 2005.
4. **Child Find**—child find procedures for locating and identifying parentally-placed private school children with disabilities attending private schools located within the boundaries of the local district, must include similar activities as those undertaken for public school children, conducted during a comparable time period and ensure the equitable participation and accurate count of parentally-placed private school students. Child find includes locating, evaluating and identifying any children who might be eligible for special education services. The local school district has the same obligations for locating, evaluating and identifying any potentially eligible private school children as it does for public school children. The district may also refuse to conduct an evaluation for a referred private school child, just as it may for a public school child who has been referred.

5. **Consultation**—there are additional requirements for the consultation process with representatives of private schools. Districts will need to consult with officials of all private schools within their jurisdiction and representatives of parents of parentally-placed private school children. The consultation is an ongoing process that includes the following:
- a. the **child find process**, including how parentally-placed private school children suspected of having a disability can participate equitably; and how parents, teachers, and private school officials will be informed of the process. The discussion of child find should also include how potentially eligible children will be located and evaluated;
  - b. the determination of the **proportionate share** of Federal funds available to serve parentally-placed private school children with disabilities, including the determination of how the proportionate share of those funds was calculated.  
**Note:** transportation of parentally-placed private school children may be considered in the expenditure of proportionate funds, however, child find activities, including evaluation, may not be used in the calculation.
  - c. The **consultation process** among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.
  - d. A discussion of how, where, and by whom **special education and related services will be provided**, including a discussion of 1) the types of services (including direct services and alternate service delivery mechanisms), and 2) how special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and 3) how and when those decisions will be made.
  - e. How to conduct the annual count of the number of parentally-placed private school children with disabilities
  - f. If the LEA disagrees with the views of the private school officials on the provision of services of the types of services (whether provided directly or through a contract), how the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.
  - g. When timely and meaningful consultation has occurred, the LEA must obtain a **written affirmation** signed by the representatives of participating private schools and if the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.
6. **Complaint Process**—A private school official has the right to submit a complaint through the state's child complaint process that the LEA 1) did not engage in consultation that was meaningful or timely; or 2) did not give due consideration to the views of the private school official. If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary of Education, United States Department of Education.

7. **Determination of Equitable Services**— parentally-placed children with disabilities in private schools do not have an individual right to receive some or all of the special education or related services that the child would receive if enrolled in a public school. Decisions about the services that will be provided must be made in consultation with officials of private schools and representatives of parents of parentally-placed private school children (see Consultation above).
8. **Provision of Equitable Services**—the services (including special education and related services) provided to parentally-placed private school children with disabilities
  - (a) must be provided by personnel meeting the same standards as personnel providing services in the public schools,
  - (b) may be a different amount of services than children with disabilities in public schools receive.
  - (c) must be described in a **service plan** developed through a meeting that the LEA must initiate and conduct. Meetings must also be held to review and revise an existing service plan. The LEA must also ensure that a representative of the religious or other private school attends each meeting, unless the representative cannot attend, in which case the LEA shall use other methods to ensure participation, including individual or conference telephone calls
  - (d) must be provided either by employees of the public agency or through contract by the public agency with an individual, association, agency, organization or other entity.
  - (e) must be secular, neutral, and nonideological. This includes materials and equipment.
9. **Service Plan**—for each parentally-placed child with a disability who has a services plan, the plan must, to the extent appropriate, meet the requirements of state and federal regulations for content of an IEP and be developed, reviewed and revised consistent with state and federal regulations.
10. **Location of services**— The Missouri Constitution and case law prohibits the provision of personnel, services, materials and equipment on the premises of a private school, unless they are provided in a **neutral site**. The IDEA allows local school districts to provide services on the grounds of private schools but does not require that they do so. The Act permits school districts to meet their obligations to private school students by offering services at the local district. School districts may choose to provide services to private school students at a **neutral site**. This is a local district decision. If a local district decides to bring services to the children, and use a neutral site, then the district can use an analysis similar to that in Title I programs to determine “neutrality”.
11. **Transportation**—If it is necessary for the child to benefit from or participate in special education or related services, the LEA must provide transportation from the child’s school or the child’s home to a site other than the private school; and from the service site to the private school or to the child’s home, depending on the timing of the services. LEAs are not required to provide transportation from the child’s home to the private school. The cost of transportation may be included in the LEA calculation of its proportionate share expenditure.

12. **Due Process**—As private school students do not have an individual right to IDEA services, due process hearing procedures are inapplicable except on issues directly related to child find and evaluation.

For additional information regarding IDEA 2004 requirements for parentally-placed private school students, see Office of Special Education Programs (OSEP) Memorandum 05-09 located on our website at <http://www.dese.state.mo.us/divspeced/IDEA-PPPSCD.html>.

“The Missouri Department of Elementary and Secondary Education does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities. Inquiries related to Department programs may be directed to the Jefferson State Office Building, Title IX Coordinator, 5<sup>th</sup> Floor, 205 Jefferson Street, Jefferson City, Missouri 65102-0480; telephone number 573-751-4581.”